IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.5547-CAT OF 2003
Date of decision: 01.10.2007

Rajiv Gogia

-----Petitioner

Vs.

Central Administrative Tribunal and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Sanjeev Thakur, Advocate for the petitioner.
Mrs.Lisa Gill, Advocate for U.T.

JUDGMENT:

This petition challenges order of the Central Administrative Tribunal (CAT) upholding termination of services of the petitioner vide order dated 8.8.2002, Annexure P.6.

Case of the petitioner is that he was appointed as Clerk-cum-Typist in Chandigarh Administration on 14.12.1999. Probation period was for two years which he completed but the same was extended by one year more and it was during the extended period of probation that services of the petitioner were terminated. The order of termination was challenged before the

CAT on the ground that in the letter of appointment, condition about extension of probation period was not mentioned.

The Administration contested the claim of the petitioner by referring to Rule 7 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1964 (in short, 'the Rules') providing for extension of probation period. It was also stated that report of CBI was received that the petitioner secured appointment by paying illegal gratification.

The CAT dismissed the application filed by the petitioner, holding:-

(i)There was no provision for automatic absorption on expiry of probation period.

(ii)Rule 7(3)(b)(ii) allowed extension of probation period upto three years.

(iii)The order of termination was not stigmatic, in view of judgment of the Hon'ble Supreme Court in **Shailaja Shivajirao Patil v. President Hon.Khasdar UGSC Sansht and others**, 2002-II LLJ 813: 2002 (10) SCC 394;

(iv)Appointment of the petitioner being vitiated by malpractice, no individual notice was required, as held in **Hanuman Prasad and others v. Union of India and others,** JT 1996(8) SC 510, **Maharashtra State Board of Secondary and High Secondary**

Education v. K.S.Gandhi and others, JT 1991(2) SC 296, **Krishan Yadav and another v. State of Haryana and others,** JT 1994(4) SC 45 and **Kendriya Vidyalaya Sangathan and others v. Ajay Kumar Das and others,** JT 2002(4) SC 467.

(v) The petitioner did not know typing, though he was shown to have passed the type test.

We have heard learned counsel for the parties and perused the record.

Rule 7(3) (b) (ii) reads as under:-

"7. **Probation:** -

(1)xx xx xxxx

xx xx xx xx

(3) On completion of the period of probation of a person, the appointing authority may:-

xx xx xx xxx xx

(b) if his work or conduct has not been, in its opinion, satisfactory or if he has failed to pass the Departmental examination,if any, specified in the Service Rules -

xx xx xx xxx

(ii) extend his period of probation and thereafter pass such order as it could have been passed on the expiry of the period of probation as specified in sub rule (1):

Provided that the total period of probation including extension, if any, shall not exceed three years."

In view of above rule, probation period could have been extended upto three years. Principle of automatic confirmation cannot be invoked having regard to the rule quoted above, in view of law laid down by the Hon'ble Supreme Court in **Registrar, High Court of Gujarat v. C. G. Sharma,** AIR 2005 SC 344, Paras 26 & 27.

Vide order Annexure P.5 dated 27.12.2001, probation period of the petitioner was extended for one year. Vide order dated 8.8.2002, Anneuxre P.6, services of the petitioner were dispensed with during probation period by an order of termination simpliciter without casting any stigma.

In view of above, no fault can be found with the impugned order of the CAT upholding the order of termination. The view taken by the CAT is consistent with the judgment of the Hon'ble Supreme Court in **Sahailaja Shivajirao Pati**l (supra), which in turn is based on earlier judgment of the Hon'ble Supreme Court in **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences ,**(2002) 1 SCC 520.

In **Municipal Committee, Sirsa v. Munshi Ram,** AIR 2005 SC 792, it was observed by the Hon'ble Supreme Court:-

> “10. It is clear from the above that if the order of termination indicates that it is a termination simpliciter and does not cast any stigma on the employee by the said order of termination the mere

fact that there was an inquiry into his conduct earlier would not by itself render the termination invalid. Applying the said principle, if we see that the order of termination in the present case is an order of discharge simpliciter. But in the course of the inquiry, the Labour Court noticed that on an earlier day, there was some incident where the administrative officer found some lacunae in the working of the respondent but based on that no charge-sheet was served nor inquiry was conducted. However, the appellant came to the conclusion that it is not in its interest to continue respondent's services, hence, discharged him. In the background, the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of the termination is colourable and in fact is a punitive order.

Xx xx xx xx xx

13. In Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another ((2002) 1 SCC 520) this Court again considering a similar case held

> "One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of

> the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

14. From the above, it is seen that in the absence of the three facts as mentioned therein, namely,

(a) a full-scale formal enquiry;

(b) into allegations involving moral turpitude or misconduct which;

(c) culminated in a finding of guilt

the termination cannot be held to be bad.

15. This Court in the said case of Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and another ((2002) 1 SCC 520 further held :

> "It cannot be held that the enquiry held prior to the order of termination turned the otherwise innocuous order into one of the punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge-sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the

termination was in substance punitive exists in the present case.

An affidavit cannot be relied on to improve or supplement an order. Equally, an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order."

We, thus, do not find any ground for interference with the view taken by the CAT.

Dismissed.

(Adarsh Kumar Goel)
Judge

October 01, 2007 **(Ajai Lamba)**
'gs' **Judge**